Local 3489, United Steelworkers of America, AFL–CIO–CLC (Stran Steel Corporation, a Division of National Steel Corporation) ***and*** **Bernard G. Frye**

United Steelworkers of America, AFL–CIO–CLC (Stran Steel Corporation, a Division of National Steel Corporation) ***and*** **Bernard G. Frye.** Cases 25–CB–3928, 25–CB–4255, and 25–CB–4240

September 8, 1982

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

On February 25, 1981, Administrative Law Judge Walter H. Maloney, Jr., issued the attached Decision in this proceeding. Thereafter, Respondents and the Charging Party filed exceptions and briefs in support thereof, and the General Counsel filed cross-exceptions and a brief in support thereof.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions[1] of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the complaints in Cases 25–CB–4255 and 25–CB–4240 be, and they hereby are, dismissed in their entirety.

IT IS FURTHER ORDERED that the motion to vacate the settlement agreement in Case 25–CB–3928 be, and it hereby is, denied.

MEMBER JENKINS, dissenting:

I dissent. For the following reasons, I would remand the proceeding to the Administrative Law Judge.

On September 30, 1980, the General Counsel filed a motion to vacate settlement agreement and reinstitute formal proceedings in Case 25–CB–3928. In his motion, the General Counsel set forth in detail the terms of the settlement agreement and the asserted reasons why Respondent had failed to comply with the settlement agreement.

The General Counsel argued that, in any event, the settlement agreement should be set aside because there was no meeting of the minds among the parties as to the rights which the settlement agreement had bestowed Frye with respect to his "immediate" eligibility to run for and to hold union office, citing *International Photographers of the Motion Picture Industries, Local 659 of the International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada (MPO-TV of California, Inc., Y-A Productions, Inc.)*, 197 NLRB 1187 (1972). Respondent did not respond to the motion.

On October 6, 1980, the Administrative Law Judge issued an Order To Show Cause directing any interested party to show cause within 10 days from the date of his Order why the General Counsel's motion should not be granted.

In the absence of any response to the Order To Show Cause, on November 3, 1980, the Administrative Law Judge ordered formal proceedings be reinstituted and that a hearing on the complaint in Case 25–CB–3928 be held.

It is implicit in the Administrative Law Judge's Order scheduling a hearing and reinstituting formal proceedings in Case 25–CB–3928 that the settlement agreement has been vacated. Indeed, Respondent failed to respond to the General Counsel's motion and the Administrative Law Judge's Order To Show Cause. Finally, Respondent's counsel at no time argued that the settlement agreement should not be set aside.

Accordingly, I would find that the Administrative Law Judge's consideration of the validity of the settlement agreement was improper, that the merits of the complaint allegations in Case 25–CB–3928 should be addressed, and that the conclusions the Administrative Law Judge reached in his Decision concerning Cases 25–CB–4255 and 25–CB–4240 should be reconsidered by him in light of the

[1] We agree with the Administrative Law Judge's Decision that the General Counsel's motion to vacate the settlement agreement in Case 25–CB–3928 should be denied. We do not believe that the circumstances here, i.e., that the parties did not answer the Notice To Show Cause, warrant relieving the General Counsel of his burden to demonstrate on the merits that the settlement agreement should be set aside. To hold procedurally that the settlement agreement was vacated by the failure of any party to respond to the Notice To Show Cause sacrifices the exercise of sound judgment based on all the circumstances on an altar of easily applied mechanical rules—a sacrifice which we decline to make. Cf. *Deister Concentrator Company, Inc.*, 253 NLRB 358, 359 (1980).

Finding no reason to vacate the settlement agreement, it follows that presettlement conduct of Local 3489 cannot constitute an unfair labor practice. Hence, we are precluded in Case 25–CB–4240 from finding the International's alleged partial ratification of the Local's presettlement actions an unfair labor practice. In light of these findings and conclusions, we find it unnecessary to pass upon the Administrative Law Judge's discussion and application of Sec. 10(b) of the Act as to the International's conduct.

findings he makes on the complaint allegations in Case 25-CB-3928.

DECISION

FINDINGS OF FACT

STATEMENT OF THE CASE

WALTER H. MALONEY, JR., Administrative Law Judge: These cases came on for hearing before me at Terre Haute, Indiana, upon consolidated unfair labor practice complaints,[1] issued by the Regional Director for Region 25, which allege that Respondent Local 3489, United Steelworkers of America, AFL-CIO-CLC (sometimes called Local 3489 or the Union), and Respondent United Steelworkers of America, AFL-CIO (sometimes called USWA or the International),[2] violated Section 8(b)(1)(A) of the Act. More particularly, the first complaint against Local 3489 alleges that Respondent caused unwarranted intraunion charges to be filed against Frye; unlawfully brought him to trial before a union trial committee on September 29, 1979; found him guilty, imposed discipline, which included a prohibition against Frye from running for or holding union office for an indefinite period of time and a declaration that Frye be regarded as a member not in good standing for 3 years, all because Frye had filed charges against Respondent Local 3489 with the U.S. Department of Labor and had also filed charges and given testimony to the Board. The second complaint against Local 3489 alleges that, in 1980, after concluding an agreement with the Board to settle the matters set forth in the complaint in Case 25-CB-3928, Local 3489 then committed additional unfair labor practices, threatening to deny Frye the right to run for or to hold union office and to inflict upon him other undefined and unwarranted intraunion discipline because of the earlier charges which he had filed with the Department of Labor and the Board. The complaint against the USWA alleges that it unlawfully affirmed the findings and discipline imposed by Local 3489 against Frye and denied him the right to seek or hold an International office because Frye had filed charges against the USWA and against Local 3489 both with the Board and the Department of Labor and had given testimony under the Act, and also because Frye had run for local union office, had supported other candidates for local union office, and had filed internal union charges alleging misconduct by certain officers and members of Local 3489.

Both Respondents deny the commission of any unfair labor practices and assert that there is no basis for setting aside the settlement agreement which Local 3489 entered into with the Regional Office and the Charging Party on June 10, 1980. Upon these contentions, the issues herein were joined.[3]

A. *The Unfair Labor Practices Alleged*

For many years Stran Steel, now a part of National Steel Corporation, has operated a plant at Terre Haute, Indiana, where it manufactures fabricated steel buildings and related products. During most of this time it has had a collective-bargaining relationship with Respondent Local 3489 covering its production and maintenance workers. Charging Party Bernard Frye has worked for Stran Steel for a number of years and is currently a bid laborer working on inspection. During this period of service, Frye had held a number of positions with Local 3489, including president (from 1973 to 1976), vice president, trustee, and grievance committeeman. In 1970 and again in 1976 he was an unsuccessful candidate for president of the Local. In 1976, he attempted to run for director of District 30 but was unable to secure the nominations of enough locals within the district to have his name placed on the ballot.[4]

Frye's relationship with Local 3489 and the USWA has been a stormy and litigious one for a long period of time. Frye was one of several dissidents who sucessfully challenged a provision in the USWA constitution limiting eligibility for International office to members who had attended one-half of the meetings of their local union during the 3 years preceding their candidacies. In a case which ultimately went to the Supreme Court, this provision was found to be unreasonable under the provisions of Title IV of the Landrum-Griffin Act (Sec. 401(e), Labor-Management Reporting and Disclosure Act of 1959). In this challenge, Frye gained a certain distinction by being mentioned by name in the text of Justice Powell's dissenting opinion. *Local 3489, Steelworkers* v. *Usery*, 429 U.S. 305 (1977). He has also filed charges against Local 3489 with the Board in these and other cases, including an unsuccessful attempt by Frye to have

[1] Charge filed in Case 25-CB-3928 against Respondent Local 3489 by Bernard Frye, an individual, on October 23, 1979; complaint issued in Case 25-CB-3928 against Respondent Local 3489 on December 28, 1979. Respondent Local 3489's answer filed on January 4, 1980; hearing held in Terre Haute, Indiana, on June 10, 1980, at which an all-party informal settlement agreement was approved by me; charge filed in Case 25-CB-4240 against Respondent USWA by Bernard Frye on July 25, 1980; charge filed in Case 25-CB-4255 against Respondent Local 3489 by Bernard Frye on August 6, 1980; motion to vacate settlement and to reinstitute formal proceedings filed by the General Counsel in Case 25-CB-3928 on September 30, 1980, and granted by me on November 3, 1980; complaint issued by the Regional Director for Region 25 against Respondent Local 3489 on September 30, 1980; complaint issued by Regional Director, Region 25, against Respondent USWA on November 24, 1980; answer of Respondent Local 3489 filed on October 6, 1980; answer of Respondent USWA filed on November 28, 1980; hearing held on all three consolidated cases in Terre Haute, Indiana, on January 7 and 8, 1981; briefs filed with me by the General Counsel, the Charging Party, and Respondents on February 9, 1981.

[2] Respondents admit, and I find, that Stran Steel Corporation, a Division of National Steel Corporation, is a Texas corporation which maintains its principal office in Houston, Texas, and a place of business in Terre Haute, Indiana, at which facility it is engaged in the manufacture, sale, and distribution of fabricated steel buildings and related products. In the course and conduct of its business Stran Steel manufactures, sells, and distributes from its Terre Haute, Indiana, facility directly to points and places located outside the State of Indiana goods and merchandise valued in excess of $50,000. Accordingly, it is an employer engaged in commerce within the meaning of Sec. 2(2), (6), and (7) of the Act. Both Respondents, respectively, are labor organizations within the meaning of Sec. 2(5) of the Act.

[3] Errors in the transcript have been noted and corrected.

[4] Local 3489 is one of about 120 locals in southern Indiana and parts of Ohio and Kentucky which comprise USWA District 30. In order to appear on the ballot as a candidate for district director of District 30, a member must be nominated for that position by eight locals in the District. Frye was nominated by only two locals and thus failed to appear on the ballot.

the Board reverse intraunion discipline which was administered to him in 1976 because he made a fraudulent claim against the Union for travel expenses and charged other personal expenses to the account of a union official without authorization. See *United Steelworkers of America, AFL–CIO (Stran Steel Corporation)*, 239 NLRB 374 (1978). In addition to these charges, Frye has filed approximately 20 intraunion charges against various union officials and members of Local 3489 between 1977 and 1980, including 12 contemporaneous charges which are the subject of this consolidated case. He also filed 32 challenges with the Department of Labor protesting the conduct of a 1979 local election, which were dismissed, and filed a civil suit (now pending) in U.S. district court containing the same allegations which were the subject of his unsuccessful protest to the Labor Department.

As more fully detailed by Administrative Law Judge Thomas D. Johnston in his decision in *USWA (Stran Steel), supra*, Frye was prohibited from holding union office for a period of 3 years as a punishment for the violation of union rules and discipline of which he was found guilty. The record in this case indicated that Frye's disability from running for or holding union office because of the 1976 discipline extended until April 1980, and that, during this period, he backed a candidate for president of Local 3489 at the April 1979 local union election. Frye's candidate, Larry L. Lynch, won the election but was soon removed from office by the USWA for refusal to obey a written directive issued to him on June 5, 1979, by USWA President McBride. The USWA then placed Local 3489 under trusteeship and named Charles R. Carl, one of two USWA staff representatives in the Terre Haute area, as administrator of the Local. Carl took over as administrator on July 3, 1979. In this position, he was empowered under the International constitution and bylaws to run the local, to appoint or remove local officials, and to expend local funds, subject only to control by the International. Local 3489 continued to operate under trusteeship until January or February 1980. One of Carl's actions was to name the man elected to the vice-presidency of the Local at the April election to be president in place of Lynch.

On July 13, 1979, Frye filed with the U.S. Department of Labor in Chicago a protest of the April election. As indicated *supra*, his protest listed some 32 allegations of procedural irregularities or other misconduct.[5] Between July 3 and 20, Frye filed with the recording secretary or the acting president of Local 3489 a total of 12 separate charges against various local members and officials, alleging that they violated provisions of the constitution or bylaws of either the International or the Local. These charges were read at the August 8 meeting of Local 3489 and were referred by Carl, the administrator, to a hearing by a Local 3489 trial committee which was held Friday morning, August 31. The trial committee was composed of Hulet Sessions, Willie Suggs, and Larry Skanks. Frye admits that he had notice of the meeting of the trial committee but he did not attend. The trial committee recommended to the Local that all 12 charges be dismissed. The recommendation was considered at the next Local meeting on September 12 and was approved by the membership by recorded votes as to each charge. Frye did not attend this meeting.

On September 1, 1979, Robert E. Mix, recording secretary of the Local, and Gerald L. Layman, a member of the Local, filed a charge against Frye. They charged him with violating article XII, page 80, section 1(3)(a), of the International constitution by filing 12 intraunion charges which were completely false and unfounded. He was also charged with representing two members of the Union and openly stating that he was the Local's Insurance chairman while in fact he was serving a 3-year suspension from holding office which extended to April 1980. The charges were read at the September 12 membership meeting and were referred by Carl to a trial committee which met on Saturday, September 29. Carl had difficulty in finding members to serve on the trial committee but ultimately prevailed upon Hulet Sessions, who sat on the committee which considered the original charges filed by Frye, and union members Mike Mahoney and Gary Osmon to act as committee members.

The trial committee conducted a hearing as scheduled, and Frye appeared to defend himself. The committee found Frye guilty of both charges and recommended that he be forbidden to hold an office or other position in Local 3489 for an indefinite period, that he be declared to be a member not in good standing for a period of 3 years, and that he be required to continue to pay dues. The committee's recommendation was considered by the membership at their next regular meeting on October 10 and was approved, with Frye casting the only dissenting vote.

The USWA has established rather elaborate machinery for dealing with internal appeals of disciplinary proceedings which permit an aggrieved to take his case all the way from a local membership meeting to the floor of the International convention. Following the approval as the local level of intraunion discipline or the dismissal of a charge filed by an aggrieved member, the International executive board will, upon timely appeal by either the accused or the accuser, appoint an International commission to visit the locality where the charge arose and to inquire *de novo* into its merits.[6] Following a hearing, an International commission must make a written report of its findings and recommendations to the appeal panel of the International executive board, which in turn makes a recommendation to the executive board. The executive board can affirm or reject, in whole or in part, the findings of the appeal panel. An aggrieved party may then take a further appeal to the delegates elected to the next International convention. Prior to the meeting of the convention an appeals committee of delegates inquires into each appeal and makes a recommendation to the convention. However, the final decision belongs to elected delegates of the entire USWA membership meeting at its regular biennial convention.

Frye appealed the dismissal of his 12 charges by Local 3489 to the International executive board and also ap-

[5] The Labor Department dismissed this protest on March 18, 1980, and accompanied its letter of dismissal to Frye with a 10-page discussion setting forth its reasons for dismissal of each item of protest.

[6] The members of an International commission are normally assigned from a USWA district other than the one in which the charge arose.

pealed the discipline meted out to him by Local 3489 at its October 10 meeting. The executive board appointed a two-member commission, composed of Obert J. Vattendahl and David Marzec, to conduct an inquiry into both matters. Vattendahl and Marzec are staff representatives from USWA District 32 in southeastern Wisconsin. They conducted a hearing in Terre Haute on January 22, 1980, at which time both Frye and his adversaries appeared and were heard. One of Frye's complaints to the commission was that the Local erred by failing to accord to him separate hearings by a separate trial committee on each of the 12 charges he filed in July 1979. At this time, he withdrew 2 of the 12 charges which he filed.

Sometime thereafter, Vattendahl and Marzec rendered a 12-page written report to the International executive board. It dismissed Frye's 10 remaining charges against various Local officers and members, dismissed the portion of the charge against Frye alleging that he had misrepresented himself as a union insurance committeeman, and found Frye guilty of filing frivolous and unfounded charges against Local officials. It recommended that the discipline imposed by the Local be reduced to a prohibition against Frye from filing any intraunion charges for a period of 3 years. It did not concur in the Local's action making Frye a member not in good standing for 3 years nor in the Local's determination that Frye should not be allowed to run for or hold office for an indefinite period[7] so it recommended that Frye's good standing be restored. The commission's findings and recommendations were adopted by the International executive board appeal panel and, on June 19, 1980, by the International executive board. On August 8, 1980, the Twentieth Constitutional Convention of the USWA, meeting in Los Angeles, approved the recommendation of its own appeals committee and adopted the findings and recommendations which had previously been approved at each previous stage of the International's appeals process.

On June 10, 1980, a hearing by me was scheduled and took place at Terre Haute, Indiana, on the complaint outstanding in Case 25-CB-3928. The International was not charged in this complaint and was not represented at that hearing. The hearing took place during the pendency of Frye's appeals to the International. At this hearing, the General Counsel, Frye, and Local 3489 entered into an informal settlement agreement, approved by me, which was executed on Standard NLRB Form 4775 and Notice Form 4726. One of the undertakings of Local 3489 written into this settlement agreement provided as follows:

> The Charged Party agrees that it will immediately permit the Charging Party to be eligible to run for and hold any Union office, subject to the generally applicable eligibility requirements contained in the Union (USWA) Constitution and Election Manual; to speak at union meetings on the same basis as any union member; to inquire of union representatives and to be told the current status of any pending grievance and to receive the assistance of union representatives in the processing of any grievance; and to vote on any matter or question submitted to the membership of the Union. . . . Both private parties agree that nothing in this Settlement Agreement will affect the rights and remedies of either party under provisions of any law other than the National Labor Relations Act.

On the day following the notice of partial dismissal of his appeal by the International executive committee, Frye wrote a letter, dated June 25, 1980, to the USWA International secretary in Pittsburgh in which he asked, among other things:

> I am also requesting to be advised by your office as to restrictions, if any, that might be applied as a result of the action of the International Administrated Local 3489 in Case T-2505 [the intra-union charges] to bar me from running for International Office. Especially the period *October 10, 1979, and June 5, 1980,* a period in which the "administrated local held me: a member not in good standing."

On July 14, 1980, International Secretary Lynn R. Williams replied as follows to Frye:

> You are a member in good standing, but do not, according to our records, meet the eligibility requirements of Article IV, Section 3(a) to run for International Office.

Williams sent copies of this letter to Harry Daugherty, district director of District 30, and to Robert Mix, the recording secretary of Local 3489. Williams' letter to Frye did not spell out the text of the cited provision. However, the cited section provides that "no member shall be eligible for nomination or election as an International Officer, District Director or National Director of Canada unless the member (a) shall be in continuous good standing for a period of five (5) years immediately preceding the election."[8]

During the period of time during which Frye was not in good standing, he attended several union meetings but was not permitted to speak or to vote. He acknowledges the fact that, after the conclusion of the June 10 settlement agreement, he was permitted to speak at meetings of Local 3489, to inquire at local meetings as to the status of grievances, and to vote on matters at issue before the membership.[9] However, after the receipt of

[7] While much of the Local's punishment was ultimately rescinded, Frye was in fact not in good standing from October 10, 1979, until June 19, 1980, when International executive board acted on the International appeal panel (and the commission) recommendation, because he did not seek or receive a stay of the Local's action during the appeal period.

[8] The USWA Local Union election manual contains a related provision pertaining to candidacies for local office. It states, in art. VII, sec. 9, that "no member shall be eligible for election as a Local Union Officer or Grievance Committee Member unless (a) the member shall have been in continuous good standing for a period of twenty-four (24) months immediately preceding the election. . . ."

[9] At the August 1980 meeting Frye questioned Carl concerning the status of grievance which he had filed against Stran Steel in 1977 or 1978 and which had been pending at the third step of the grievance procedure for a long period of time. Carl informed him that the grievance had no merit and was going to be withdrawn if in fact it had not already been withdrawn.

the above-quoted letter from the International relating to Frye's eligibility to hold office, a number of remarks were made by Local officials who work at Stran Steel expressing support for agreement with the International's determination. Recording Secretary Robert Mix, a longtime enemy of Frye, stated to a number of unnamed individuals that Frye would be ineligible to run for office. He referred to the letter from the International and expressed the opinion that Frye also did not have 24 months of continuous good standing, a prerequisite for running for Local office. On one occasion, Mix stated that, if Frye's name was put on the ballot, he would protest the election. On one occasion, Mix stated to Frye and other Stran employees, with reference to the June 10 settlement agreement, that "Frye lost. We won."

On another occasion, Frye spoke with Local 3489 President Jerry Dewey on the job at Stran Steel. He asked Dewey what the Local's position would be concerning his running for office in light of the July 14 letter from the International stating that he was ineligible for International office because of lack of sufficient time in continuous good standing. Dewey replied that the Local would have to adopt the same policy as the International. On another occasion, Glenn Osborne, the Local 3489 grievance committeeman, told Local 3489 member (and Stran employee) Robert Beard that he would bet a month's pay that Frye could not run for union office. A week later, Mix showed Beard a copy of the letter of July 14 from the International relating to Frye's eligibility. On another occasion, Mix expressed to Beard the opinion that the notice which had been posted in the plant as a part of the June 10 settlement agreement "didn't mean a damn thing."

B. *Analysis and Conclusions*

1. The settlement agreement with Local 3489 and the second complaint against Local 3489

As recited above, the General Counsel, the Charging Party, and Respondent Local 3489 entered into a settlement agreement on June 10, 1980, disposing of the complaint in Case 25-CB-3928. Normally speaking, a settlement agreement disposes of all issues involving presettlement conduct unless prior violations of the Act were unknown to the General Counsel, not readily discoverable by investigation, or specifically reserved. *Hollywood Roosevelt Hotel Co.*, 235 NLRB 1397 (1978). On November 3, 1980, at the request of the General Counsel, I ordered that formal proceedings in that case be reinstituted and that a hearing be held to litigate the matters contained in that complaint. Later, complaints in the other two dockets were consolidated with that case for hearing.

Normally, an all-party settlement agreement may not be set aside and the underlying matters resolved unless the respondent has committed further unfair labor practices evidencing an unwillingness to abide by the terms of the settlement, or unless the respondent has failed to live up to a stated term of its undertaking. In the absence of such proof, a settlement agreement must be honored and a motion to vacate it must be denied. *Fine Organics, Inc.*, 214 NLRB 158 (1974); *U.S. Postal Service*, 234 NLRB 820 (1978); *Indio Community Hospital*, 225 NLRB 129 (1976). A third and rarely invoked basis for setting aside a settlement agreement is a finding of a lack of meeting of the minds of the parties when they executed the agreement. *Stage Employees Local 659 (MPO-TV of California, Inc.)*, 197 NLRB 1187 (1972); *Local Lodge Number 5, International Brotherhood of Boilermarkers, etc. (Regor Construction Company, Inc.)*, 249 NLRB 840 (1980). While the propriety of litigating settled matters was discussed at length at the hearing in these cases, this question was not addressed by any of the parties in their post-trial memoranda. Despite this fact, the continued validity of the June 10 settlement agreement is a threshold question and must be resolved before proceeding to other matters.

The complaint in Case 25-CB-4255 sets forth certain conduct on the part of the Local which, in the opinion of the General Counsel, constitutes a basis for setting aside the June 10 agreement. The evidence adduced at the hearing relating to these allegations falls far short of constituting unfair labor practices. After the International had ruled, in a letter dated July 14, 1980, that Frye was not eligible to run for International office because his period of continuous good standing had been interrupted, various Local officials expressed a willingness and perhaps some enthusiasm about agreeing with this determination. Recording Secretary Mix related the substance of the International's ruling in a statement made to certain members of the Local, adding his own conclusion that Frye's problem with continuous good standing would also affect his eligibility to run for a Local office. He told another member that, in respect to the settlement, Frye had "lost" and the Union had "won." Local President Dewey stated to one or more members that the Local would have to go along with the International's interpretation of Frye's eligibility. A third Local official offered to bet another member a month's pay that Frye could not run for office. These statements constitute neither a promise of benefit nor a threat of reprisal but an expression of opinion which these individuals were free to make. *N.L.R.B.* v. *Teamsters Local 627* [*Standard Oil Company*], 241 F.2d 428 (7th Cir. 1957). Mix's comment to a fellow member that a notice which had been posted at the Stran Steel plant in compliance with the June 10 agreement "wasn't worth a damn" is also an expression of opinion and does not constitute a repudiation of the agreement. Cf. *Arrow Specialties, Inc.*, 177 NLRB 306 (1969); *Bingham-Willamette Company, a Division of Guy F. Atkinson Company*, 199 NLRB 1280 (1972); *Bangor Plastics, Inc.*, 156 NLRB 1165 (1966), enforcement denied 392 F.2d 772 (6th Cir. 1968). Indeed, it was an inaccurate expression of opinion since, in fact, Frye was enabled to speak and vote at union meetings following the June 10 settlement, something he was not privileged to do for a period of 8 months previous to that date.

The question of the eligibility of a member of steelworkers to run for union office—either local or International—is governed not by the provisions of any Local rules or bylaws but by provisions of the USWA election manual which are unionwide in scope and are interpreted and applied by the International. It goes without saying that the International was not a party to the June 10

agreement and could not have been since, at that time, it had not been charged with the commission of an unfair labor practice. Hence, nothing the USWA did subsequent to June 10 could constitute a violation of the agreement. Contrary to the allegation in paragraph 5(a) of the complaint in Case 25-CB-4255, the Local did not engage in any postsettlement threats to deny Frye the right to run for or to hold local office. The power to determine Frye's eligibility was not in its hands and the expressions of opinion by Local officers as to Frye's eligibility were not threats on the part of the Local to do anything. Even Mix's threat to protest an election if Frye ran, a right guaranteed to him by the International constitution and by the Labor Management Reporting and Disclosure Act of 1959, does not constitute a threat to violate any rights guaranteed to Frye by Section 7 of the National Labor Relations Act. Accordingly, I conclude that Local 3489 did not commit any unfair labor practices following the June 10 settlement which would warrant the setting aside of that agreement.

Another and alternative argument used by the General Counsel at the hearing to justify the litigation of presettlement conduct on the part of Local 3489 was the assertion that somehow Frye and, by implication, the General Counsel were duped into signing a document whose meaning they did not understand and that, following the settlement, the Local failed to abide by a specific undertaking set forth in the agreement. The reference in question is to Frye's eligibility and his right to run for office following the execution of agreement in question. The agreement states, *inter alia*, that Local 3489 agrees that "it will immediately permit [Frye] to be eligible to run for and hold any union office, subject to the generally applicable eligibility requirements contained in the Union [USWA] Constitution and Election Manual." While this sentence is not a model of legal draftsmanship, its language makes it abundantly clear that Local 3489 was not waiving, as to Frye, any limitations contained in the USWA constitution and election manual concerning Frye's eligibility to run for and hold office (something the Local had no power to do in any event). It is also clear that the agreement was limited to actions by the Union pertaining to Frye's running for or holding office which did not involve general eligibility requirements. The agreement did not reverse any intraunion findings of wrongdoing on Frye's part nor expunge from Frye's record the lack of good standing which existed for a period of 8 months by virtue of the guilty finding which had been approved by the membership of the Local on October 10, 1979. It simply removed certain but not all of the punishment which flowed from the guilty finding of October 10, 1979, expressly reserving the question of his eligibility for union office.[10]

Frye is in a poor position to say that he was duped into signing an agreement which he freely entered into, or to contend that he did not understand its implications. The General Counsel is in no better position to make this confession of error. The agreement itself made explicit reference to eligibility requirements in the USWA constitution and election manual. By virtue of his long and persistent involvement in litigation over the validity of the eligibility provisions of the USWA constitution, Frye was by any definition a veritable expert as to their requirements. When, on June 25, the day following notification by the USWA of its action on the intraunion discipline, Frye wrote to the International secretary for a ruling concerning his eligibility for office, he made specific reference to the fact that he had been in bad standing for a period of several months because of intraunion discipline. Frye well knew the answer to his question before he asked it but preferred to have the International put two and two together for him.[11] The ruling by the International on July 14 simply applied undisputed fact—Frye's 8 months in bad standing—to a clear and unequivocal provision of the International's election manual. The USWA could have made no other ruling without violating the terms of its own governing instruments.

Accordingly, I conclude that Local 3489 did not commit the unfair labor practices attributed to it in paragraph 5(a) of the complaint in Case 25-CA-4255 nor has it failed to live up to any provisions of the settlement agreement concluded in Case 25-CA-3928. Accordingly, the complaint in Case 25-CA-4255 should be dismissed in its entirety and the General Counsel's motion to vacate the settlement agreement in Case 25-CA-3928 should be denied.

2. The complaint in Case 25-CA-4240 against the USWA International

The theory of the General Counsel's case against the USWA has a threefold dimension. The General Counsel contends that the USWA is vicariously guilty of wrongdoing committed by its Local 3489 in the fall of 1979 by virtue of the fact that the charges, trial, and discipline administered by Local 3489 to Frye took place while the Local was in trusteeship and was being directly administered by USWA Staff Representative Carl under USWA direction and control. Secondly, the General Counsel contends that the USWA is guilty of unfair labor practices because, in the course of its appellate review of Local 3489's discipline of Frye, starting from the hearing by the International commission and running through the action of the USWA general membership meeting in biennial convention, the International upheld and ratified, at least in part, conduct of the Local which had been illegal from its inception.

The General Counsel also contends that the July 14, 1980, ruling by International Secretary Lynn R. Williams to the effect that Frye was ineligible to run for International office was violative of the Act. These contentions

[10] For instance, the text of the June 10 agreement finally accepted by all parties excised a suggested portion relating to Frye's right to file intraunion charges, a matter discussed in detail during the settlement talks and left by the parties to resolution by the USWA's intraunion disciplinary procedures which were then in progress.

[11] The International constitution has a provision permitting the International executive board to issue a stay of execution of any discipline imposed at the local level pending an appeal by a member to the International. Frye did not exercise this right nor receive any stay. Accordingly, the bad standing imposed by Local 3489 remained intact until it was lifted by the International on June 19

run afoul of the statute of limitations contained in Section 10(b) of the Act.

Frye did not file any charges against the USWA growing out of the 1979 discipline until July 25, 1980, after he had received a ruling from the International to the effect that he could not run for International office because of lack of continuous good standing for a period of 5 years. In determining the merit of the complaint based on this charge, the Board is precluded from relying upon acts and conduct which occurred prior to January 25, 1980. Such acts and conduct include the entire history of Frye's 1979 intraunion dispute within the Local as well as events occurring at the hearing of the International commission on January 22, 1980. The lead case in this area, *Bryan Manufacturing Company*,[12] permits the Board to look into pre-limitation conduct if it lays bare a putative unfair labor practice occurring within the 10(b) period. Such latitude has generally been limited to evidence of animus, since old grudges can be harbored much longer than the statutory period allowed by Congress. However, this latitude does not extend to the finding of a violation of the Act for conduct occurring within the 10(b) period when those findings must be predicated upon findings of unfair labor practices committed outside the period of limitations. While this line of demarcation is sometimes hard to draw, the facts of this case and the outline in the General Counsel's brief of the incidents forming the ingredients of his case against the International make it clear that conduct on the part of the International occurring after January 25, 1980, could only be adjudicated as illegal by reference to and in reliance upon findings of illegal conduct occurring before that day. It may well be that everyone who has dealt with Frye in intraunion controversies over a long period of time harbors animus against him, but the elements of an unfair labor practice involve much more than animus. Upon the General Counsel's initial theory of USWA's vicarious responsibility for the acts of Local 3489, the events constituting alleged unfair labor practices by Local 3489 occurred in the fall of 1979 when Staff Representative Carl was in charge of the Local. This theory would plainly require the Board to inquire into pre-10(b) period conduct and find that one or more unfair labor practices were committed by Local 3489 at that time in order to impose derivative liability upon the International. This the Board plainly may not do.

According to the General Counsel's second theory, ratification in part by the USWA within the 10(b) period of discipline administered by the Local outside the 10(b) period in the course of the International's appellate review of this case should warrant a finding of a violation on the part of the International, even though the underlying charges against the Local have been settled and the settlement affirmed. Here, too, a Board finding of illegal conduct after January 25, 1980, in the review of Frye's discipline would require a detailed probe into events which took place long before that time and a finding that those events, later ratified, were also unfair labor practices. Section 10(b) also forbids this type of retrospection.

As for the USWA's ruling of Frye's ineligibility for office which was made on July 14, 1980, there is not the slightest causal connection established between any viable unfair labor practices (or animus of any variety) and the ruling which was made. Frye was in bad standing for a period of 8 months and he knew it. The election manual requires a candidate for International office to be in continuous good standing for a period of 5 years. As the Supreme Court pointed out in *Local 3489 Steelworkers* v. *Usery, supra*, good standing as prerequisite for union office is not only a requirement of the USWA constitution but is expressly sanctioned by Section 401(e) of the Labor-Management Reporting and Disclosure Act of 1959. An inquiry into the legitimacy of Frye's bad standing for 8 months is beyond the Board's purview, barred by settlement as to the Local and by limitations as to the International. Accordingly, when the International ruled as it did upon Frye's inquiry, it made a determination dictated both by the clear terms of its election manual and the facts at hand which it was bound to accept at face value. Accordingly, for the reasons given above, I would dismiss the complaint against the International in Case 25-CA-4240.[13]

Upon the foregoing findings of fact and upon the entire record herein considered as a whole, I make the following:

CONCLUSIONS OF LAW

1. Stran Steel Corporation, a Division of National Steel Corporation, is an employer engaged in commerce and in operations affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Respondent Local 3489, United Steelworkers of America, AFL-CIO-CLC, and United Steelworkers of America, AFL-CIO-CLC, are, respectively, labor organizations within the meaning of Section 2(5) of the Act.

3. The terms of an all-party informal settlement agreement concluded between Respondent Local 3489 and the Charging Party herein on June 10, 1980, in Case 25-CB-3928 have not been violated and said agreement should not be set aside.

4. Neither Respondent violated Section 8(b)(1)(A) of the Act, as alleged in Cases 25-CB-4255 and 25-CB-4240.

Upon the foregoing findings of fact and conclusions of law, and pursuant to Section 10(c) of the Act, I make the following recommended:

[12] *Local Lodge 1424 International Association of Machinists, AFL-CIO* v. *N.L.R.B.*, 362 U.S. 411 (1960).

[13] The Respondents devoted a major portion of their brief to the argument that no unfair labor practices occurred because the conduct alleged has been rendered immune from Board inquiry by the proviso to Sec. 8(b)(1)(A) and because the conduct of the Local and the International set forth in this record is a legitimate exercise of union discipline against a disruptive member whose actions threatened the solvency of a small local. Because of the manner in which I have disposed of this case, I will not pass upon these contentions. However, since a long history of contentiousness between these parties includes, among other things, wrenching out of context the remarks, rulings, holdings, and decisions made by public agencies, I want to make it abundantly clear that nothing I have said or failed to say in this Decision should be construed by anyone as a finding by me that either Respondent has in any way violated any provision of the Act at any time.

ORDER[14]

The motion to vacate the settlement agreement in Case 25–CB–3928 is denied and the complaints issued in Cases 25–CB–4255 and 25–CB–4240 are dismissed in their entirety.

[14] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions and Order, and all objections thereto shall be deemed waived for all purposes.